

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

JAIME GARCIA, et al.,

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Plaintiffs,

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v.

*

Case No.: B-01-103

RONALD D. KIRSTIEN, et al.,

*

Defendants

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**DEFENDANTS, KIRSTIEN AND ROTHSTEIN'S,
MOTION FOR SUMMARY JUDGMENT**

Defendants, Ronald D. Kirstien and Harvey Rothstein (hereinafter "Defendants"), by their undersigned counsel, move for summary judgment, pursuant to Fed. R. Civ. P. 56, and in support thereof state as follows:

1. Defendants are limited partners of O'Stein Brothers Limited Partnership No. 4. ("O'Stein Brothers"). O'Stein Brothers was an investor in Chef Garcia, Inc. ("Chef Garcia"). Plaintiffs were stockholders of Chef Garcia.
2. Defendants are not proper party defendants because they did not at any time have a legally recognized business relation with Plaintiffs individually, nor were they individual investors in Chef Garcia.
3. Plaintiffs do not have standing to bring this action individually, as all claims asserted belong to Chef Garcia, Inc. Accordingly, all claims could only have been asserted derivatively.

4. In addition, Plaintiffs claims that the assets of the corporation were misappropriated is barred by *res judicata* as all such claims should have been asserted in the Bankruptcy Court in the Chef Garcia bankruptcy proceeding.

5. Plaintiffs claims asserted in all counts of the Complaint fails as a matter of law as Plaintiffs fail to establish the elements of each and every count.

6. Plaintiffs claims are barred by the statute of limitations as Plaintiffs knew, or with due diligence, reasonably should have known of the alleged wrongs complained of in 1997 and the lawsuit was not filed until January 12, 2001.

7. There is no general dispute of material fact.

8. Defendants hereby incorporate the reasons set forth in the accompanying Memorandum in Support of Motion for Summary Judgment as if fully set forth herein.

WHEREFORE, Defendants, Ronald D. Kirstien and Harvey Rothstein, respectfully requests that this Court grant summary judgment in its favor.

Respectfully submitted,

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